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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re M. G., a Person Coming Under the  
Juvenile Court Law.

B264523

(Los Angeles County  
Super. Ct. No. DK09854)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ARTURO G.,

Defendant and Appellant.

APPEAL from a judgment and orders of the Superior Court of Los Angeles  
County, D. Zeke Zeidler, Judge. Affirmed.

Lieber, Williams & Labin and Yury Galperin for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County  
Counsel, and John C. Savittieri, Deputy County Counsel, for Plaintiff and Respondent.

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## **INTRODUCTION**

Father appeals the juvenile court's judgment finding jurisdiction over his son, 12-year-old M., pursuant to Welfare and Institutions Code section<sup>1</sup> 300, subdivisions (a), (b) and (c), and from the related dispositional orders. The juvenile court granted full legal and physical custody of M. to Mother and required supervised visitation for Father as long as he tested clean for drugs and alcohol. Father argues that jurisdiction was not supported by substantial evidence, and asserts that the Department of Children and Family Services (DCFS) and Mother misused the dependency system to impermissibly override a family court custody order. We affirm because Father's history of violence toward M. and Mother, and alcohol abuse supported the court's finding that there was a substantial risk M. would suffer intentional, serious physical harm by Father. We also conclude that the juvenile court proceedings have primacy over family court proceedings and the record does not support Father's claim regarding misuse of the dependency system.

## **FACTS AND PROCEDURAL BACKGROUND**

Mother and Father are no longer in a relationship and have been living apart since M. was a baby. Pursuant to a custody order from the family court, M. lived primarily with Mother but Father had physical custody of M. the first, third, and fifth weekends of every month. On February 4, 2015, the family came to DCFS's attention when Mother called, alleging Father had emotionally abused then-11-year-old M. during a recent visit. DCFS's investigation revealed a pattern of emotional and physical abuse by Father toward both M. and Mother, fueled by alcohol abuse.

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<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code.

## **1. Abuse of Mother**

During her two-year relationship with Father and thereafter, Father physically and verbally abused Mother. When M. was a baby, Father attacked her and grabbed her by the neck. In 2006, Father hit Mother in the face, choked her in Malek's presence, and threatened her with a rubber bat when he returned M. to Mother's home after a visit. Mother obtained a restraining order after the 2006 incident, but Father violated the order in 2007 when he attempted to assault her. When Father violated the restraining orders, Mother went into hiding with M. for months, escaping to her brother's residence in Texas. Mother explained that Father had a violent temper, abused alcohol, and usually was under the influence of alcohol when he was abusive to her or Malek. Father drank daily, during which time his aggression escalated. Father also sent Mother threatening text messages. Father's history of abuse appears to predate his relationship with Mother, as he was convicted of spousal battery in 1999.

## **2. Abuse of Malek**

The first notable instance of physical abuse toward M. in the record occurred several years ago. When M. was nine years old, Father made M. take his clothes off and then whipped M. with a belt, leaving "massive bruises" on his legs and buttocks. M. said Father beat him on that occasion because Father was angry over something that happened at school. Mother photographed the bruises. Although the photos did not contain Malek's face, M. and Mother both told DCFS about the event and the photographs, and in an interview with DCFS, Father admitted to whipping M. with a belt. Although Father did not whip M. again following this incident, Father regularly pulled Malek's hair very hard and slapped his face, hurting him. Most recently, Father slapped him because M. did not know the answer to his schoolwork. When M. was between 10 and 11 years old, Father slapped M. hard on the face with an open hand at least 20 times, according to Malek.

Father's hostility and aggression permeated his relationship with Malek. Pursuant to the family court custody order, Father had one-hour daily phone calls with Malek. During these phone calls, Father, who was identifiably drunk during some of them, called M. names, cursed at him, and harassed him. As a result, M. became upset and nervous, had an upset stomach, and paced around while talking to Father on the phone. M. feared answering Father's questions on the phone, stating "if I don't answer right he'll do something next time he sees me, like pull out my hairs." M. also had to hide the fact that he enjoyed spending time with Mother because Father became angry when M. said such things.

The January 2015 incident that led to the DCFS referral involved telephonic harassment. While at his paternal grandmother's house,<sup>2</sup> M. informed Father over the phone that he may like boys and that a classmate called him gay. Father, who seemed upset and drunk, told M. he should have fought the child who called him gay. Father then "called [Malek] a cunt, a bitch, a punk and . . . said that [Malek] was bisexual." Father told M. that "he did not want a gay son and [that Malek] was no longer his son and he did not want anything to do with [Malek]." Father ordered M. to call Mother to pick him up because he never wanted to see M. again. Father then sent nasty text messages and an email to Mother, calling her names and accusing her of being the reason M. was gay.

M. repeatedly told DCFS social workers that he was physically afraid of Father and did not want to see him. Following DCFS involvement, M. feared Father would hurt him because of what he told the social workers.

### **3. Alcohol Abuse and Interaction with DCFS**

Father also appeared under the influence when interacting with DCFS social workers. Father was argumentative and aggressive, slurred his speech, and rambled during his DCFS telephonic interview. Shortly after ending the phone conversation,

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<sup>2</sup> M. often went to his paternal grandmother's house during his weekends in Father's custody.

Father repeatedly called the social worker and was incoherent on the phone with her. Subsequently, Father failed to show up at the meeting he scheduled with the social worker. When the social worker called to inquire about his absence, Father said he had to work and hung up the phone. Later that day, Father telephoned the social worker 11 times within 70 minutes. On each occasion, the social worker answered the phone but received no response. Father also texted the social worker four times that evening. Throughout the case, Father was difficult to talk to, uncooperative, and showed no interest in remedying his problems or even discussing the allegations against him.

During an in-person interview with DCFS, Father showed signs of a chronic alcohol abuser, smelling like alcohol, appearing in poor health with flushed skin and watery eyes, and having unsteady behavior. Father was also “excessively focused on [M]other,” made multiple allegations against her, and denied committing any physical abuse toward her.

#### **4. Family Court Proceedings**

On February 27, 2015, Mother obtained a restraining order against Father in the family law department. It protected Mother only, yet changed the child custody order. Father asserts that this restraining order was based on “the same set of facts which gave rise to [DCFS]’s investigation and eventual filing of the Juvenile Dependency Petition.” As part of the restraining order, the court limited Father to unsupervised visitation with M. on the first, third, and fifth weekends of every month from Saturday to Sunday only, required M. to be exchanged by the parents at a police department location, and limited Father’s telephone calls to two weekly 15-minute calls.

#### **5. Detention and Jurisdiction**

On March 10, 2015, the court detained M. from Father’s custody, and ordered monitored visitation for Father. That same day, DCFS filed a section 300 petition under subdivisions (a), (b), and (c), alleging Father abused alcohol and physically and emotionally abused Malek. In particular, the allegation in support of jurisdiction under subdivision (a) stated:

“In 2015 and on prior occasions, [Father] physically abused [Malek] by striking the child’s face, with [Father’s] hand. On a prior occasion, [Father] struck the child’s buttocks and legs, with a belt, inflicting bruises to the child’s buttocks and legs. On prior occasions, [Father] pulled the child’s hair. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The child does not wish to visit with [Father] due to the [Father’s] physical abuse of the child. [Father] has a criminal history of a conviction of Batter Spouse/Ex Spouse. [Father’s] physical abuse of the child endangers the child’s physical health and safety and places the child at risk of severe physical harm, damage and physical abuse.”

The allegations pursuant to subdivisions (b) and (c) describe similar abuse and further detail Father’s alcohol abuse and emotional abuse of Malek.

On April 27, 2015, the juvenile court held the combined jurisdiction and disposition hearings. Mother and M. appeared before the court. Although Father had been present in the courthouse, he left and did not appear for the hearing. Without objection, the juvenile court admitted DCFS’s reports into evidence and then counsel argued the merits of the section 300 petition. Father’s counsel asserted that the issues in the petition had been litigated and determined against Mother when the family court considered her application for a restraining order on February 27, 2015. Counsel argued that Mother brought the dependency petition because she disliked the limited restraining order issued by the family court. According to counsel, Mother was “forum shopping.”

As to the petition, Father’s counsel argued that there was no current risk to M. because he was significantly younger at the time of the whipping and because the hair pulling amounted to cultural playfulness. Counsel also argued there was no nexus between Father’s alcohol abuse and the physical abuse. DCFS, Mother, and M. all requested the court to sustain the petition as true.

The court sustained the petition under all three subdivisions, declared M. to be a dependent of the court, and removed M. from Father’s custody. The court ordered Mother to have sole legal and physical custody, and Father to have monitored visitation in a therapeutic setting, providing that Father tested negative for drugs and alcohol. The juvenile court terminated dependency jurisdiction and stayed its order pending receipt of

the custody order. On May 1, 2015, the court received and entered the custody order and removed the stay of its order terminating jurisdiction.

## **DISCUSSION**

Father raises two issues on appeal: jurisdiction and misuse of the dependency system. We affirm on all grounds, addressing each in turn.

### **1. Jurisdiction Was Supported by Substantial Evidence**

Father appeals arguing that the court erred in finding jurisdiction over M. pursuant to section 300, subdivisions (a), (b), and (c). We review the juvenile court's jurisdictional findings for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.) "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value." (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) Although substantial evidence may consist of inferences, the inferences " 'must be "a product of logic and reason" and "must rest on the evidence" [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].' " (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, *italics omitted.*) Conflicts in the evidence and reasonable inferences are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) "[I]ssues of fact and credibility are questions for the trier of fact." (*Ibid.*)

When a section 300 petition alleges multiple subdivisions, " 'a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We proceed with our jurisdictional analysis under section 300, subdivision (a), which authorizes jurisdiction if the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." A substantial risk of serious future injury may be evidenced by "the manner in which a less serious injury was inflicted, a history of *repeated* inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or

guardian that indicate the child is at risk of serious physical harm.” (*Ibid.* (italics added).) The statute clarifies that “ ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.” (*Ibid.*)

Here, Father beat M. with a belt on his bare buttocks and legs just two years prior to the filing of this dependency petition. He hit M. so hard that the belt left “massive” bruising. Following that incident, Father regularly physically hurt M. by slapping his face very hard and pulling Malek’s hair. Historically, Father physically assaulted Mother, choking and hitting her, and had a prior conviction for domestic violence. Father’s rage also manifested in his recent verbal assaults on M. and Mother, which involved name calling and foul language. Father’s physical and verbal abuse appears to have been fueled and escalated by his regular and excessive alcohol consumption. As Father never acknowledged that his behavior or his drinking were problematic despite DCFS intervention, it is highly likely the physical abuse will continue and worsen. The abuse is also likely to escalate given Father’s troubling reaction to Malek’s discussion of his sexuality and the fact that Malek’s questions regarding his sexual identity will become more prominent as he enters his teenage years.

We conclude that there was substantial evidence of a severe physical threat to M. because Father repeatedly engaged in inappropriate discipline toward him and has a long history of physical abuse toward those close to him. His violent tendencies and uncontrolled anger permeated his familial relationships. At minimum, Father’s violent behavior toward M. and Mother, and his aggressive disposition show that there was a substantial risk that M. would suffer intentional, serious physical harm at Father’s hands. (See *In re N.M.* (2011) 197 Cal.App.4th 159, 162–163, 169 [although the father did not seriously injure the daughter when he started to drive away while girl was reaching into truck’s cargo area, incident was part of larger pattern of physical abuse].)



Father argues that it is unfair to use the belt-beating allegations against him because the photographs do not have Malek's face in them and DCFS's investigation of these allegations in 2012 was inconclusive. We disagree as Mother's and Malek's statements corroborate that the photos are of the injuries Father inflicted upon M., and because Father admitted to DCFS in an interview that he whipped M. with a belt. Regardless of the results of DCFS's earlier investigation, substantial evidence in the present case shows that Father whipped M. with a belt. Father is essentially asking us to reweigh the evidence on appeal and to substitute his judgment for that of the trial court. We may not reweigh or express an independent judgment on the evidence. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) In this regard, issues of fact and credibility are matters for the dependency court alone. (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.) As stated above, substantial evidence supports the juvenile court's ruling as to jurisdiction.

As the record contains sufficient evidence to sustain the dependency petition under section 300, subdivision (a), we affirm the court's judgment finding jurisdiction over M. and the related disposition orders.

## **2. The Juvenile Court Was the Appropriate Forum to Address Father's Abuse**

Mother first called DCFS on February 4, 2015, to report Father's emotional abuse of M. the previous weekend. On February 27, 2015, Mother obtained a temporary restraining order in family court, and the family court held a hearing on Mother's request for a three-year restraining order. At the conclusion of the hearing, the family court issued the restraining order protecting Mother only. It ordered Father to stay away from Mother and to refrain from harassing her. The court modified the child custody order, requiring pickup and drop off at the police station, biweekly overnight weekend visitation with Father, and twice weekly telephone calls between M. and Father lasting no more than 15 minutes.

Father argues that DCFS and Mother engaged in “[i]mpermissible [f]orum [s]hopping” when DCFS filed the section 300 petition on March 10, 2015, reasoning that the action “represent[ed] a clear misuse of the dependency system in an attempt to override a family court order.” Although we agree that “ ‘juvenile courts must not become a battleground by which family law war is waged by other means,’ particularly when ‘the resources of local government social service agencies are stretched thin,’ ” that did not occur in this case. (*In re Nicholas E.* (2015) 236 Cal.App.4th 458, 466.) Here, DCFS discovered physical and emotional abuse by a parent and sought to protect a vulnerable child.

In cases like this one, “where the Department is able to prove that dependency jurisdiction is warranted, these concerns [regarding undermining the family law court orders] must give way to the primacy of dependency court jurisdiction and its special role. To rob the Department of its chance to prove its allegations is to elevate judicial economy above the protection of children, in contravention of our Legislature’s express declaration that dependency jurisdiction be construed broadly.” (*In re Nicholas E.*, *supra*, 236 Cal.App.4th at p. 466; see *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31 [“Although both the family court and the juvenile court focus on the best interests of the child, the juvenile court has a special responsibility to the child as *parens patriae* and must look at the totality of the child’s circumstances. . . . By empowering the juvenile court to issue custody . . . orders, the Legislature has expressed its belief that ‘the juvenile court is the appropriate place for these matters to be determined . . . .’ ”].) Here, the juvenile court properly exercised its jurisdiction over M. to protect him from Father’s abuse. Contrary to Father’s contentions, there is substantial evidence of Father’s abuse and this is an appropriate use of the dependency system.

## **DISPOSITION**

The juvenile court's judgment and orders are affirmed.

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STRATTON, J.<sup>\*</sup>

We concur:

EDMON, P. J.

LAVIN, J.

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<sup>\*</sup> Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.